

REMARKS

Restriction is only proper in a national stage application filed pursuant to 35 U.S.C. 371 if the application lacks unity of invention under 37 CFR 1.475. See 37 CFR 1.499 and MPEP 1893.03(d). The Examiner has not made out a case of lack of unity of invention.

A group of inventions is considered linked as to form a single general inventive concept where there is a technical relationship among the inventions that involves at least one common or corresponding special technical feature, i.e., the technical feature that defines the contribution which each claimed invention, considered as a whole, makes over the prior art. See, for example, PCT Rule 13.2 and Examples 1-30 of Annex B Part 2 of the PCT Administrative Instructions as in force from April 1, 1995 contained in Appendix AI of the MPEP.

Note, the determination regarding unity of invention is made without regard to whether a group of inventions is claimed in separate claims or as alternatives within a single claim. The basic criteria for unity of invention are the same, regardless of the manner in which applicant chooses to draft a claim or claims.

The special technical feature here that informs all the claimed inventions is a hair cosmetic comprising a particular organopolysiloxane and a particular cationic surfactant, as claimed in Claim 1, from which claim all other claims depend. All of the claims are drawn to a hair cosmetic comprising the combination of a particular organopolysiloxane and a particular cationic surfactant, and for Claims 6 and 12-15, an additional lubricant component.

Restriction is only proper if the claims of the restricted groups are either independent or patentably distinct. Grouping of claims based on narrowing embodiments of the same invention is not such a basis, as the present grouping is, and thus, there is no basis for restricting the claimed invention to the above-listed four groups. Indeed, the grouping is arbitrary and capricious. Focusing on the organopolysiloxane component, it is noted that the

breadth of this component decreases from Claim 1 to Claim 4. In other words, the organopolysiloxane component of Claim 1 is inclusive of the organopolysiloxane component of Claim 2, which is inclusive of the organopolysiloxane component of Claim 3, which is inclusive of the organopolysiloxane component of Claim 4. That, in fact, appears to be the basis for the above grouping of claims. There is no justification for grouping claims on this basis.

In addition, the Examiner relies on US 5,077,041 (Yamashina et al) as justification for finding no special technical feature herein. The Examiner is incorrect. Yamashina et al discloses a shampoo composition comprising, *inter alia*, a modified silicone polymeric compound which may contain at least one amino alkyl group and at least one group selected from hydroxyl, hydroxyalkyl, oxyalkylene and polyoxyalkylene groups (column 4, lines 63-68), and optionally one or more quaternary branched ammonium salts (column 10, line 64ff). The modified organopolysiloxane of Yamashina et al does **not** have an amino-modified organopolysiloxane chain and a polyoxyalkylene chain. Rather, the polyoxyalkylene group of Yamashina et al is part of the amino-modified organopolysiloxane chain thereof, such as the modified silicone compound of formula (VII) therein. Clearly, Yamashina et al neither discloses nor suggests a block copolymer comprising a block of an amino-modified organopolysiloxane chain and a block of a polyoxyalkylene chain, as recited in the above-elected Group III.

In addition, Applicants respectfully submit that a search of all the claims would not impose a serious burden on the Examiner.

Finally, with regard to the elected species, if the Restriction Requirement and Election of Species Requirement are not withdrawn, Applicants respectfully submit that, should the elected species be found allowable, the Examiner should expand its search to the non-elected species. Therefore, for the reasons presented above, Applicants submit that the Examiner has

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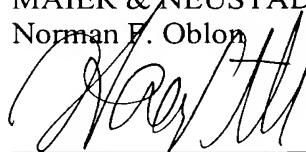
failed to meet the burden necessary in order to sustain the Restriction Requirement and the Election of Species Requirement. Withdrawal of these requirements is respectfully requested.

Applicants respectfully submit that the above-identified application is in condition for examination on the merits, and early notice of such action is earnestly solicited.

Respectfully submitted,

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